

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID WESLEY HAWKINS,

Petitioner,

No. C 03-3668 PJH

v.

**BRIEFING ORDER RE: PETITIONER'S
THIRD REQUEST FOR DISCOVERY**

JOHN CAVALLI, Chief, Santa Clara
County Probation Department

Respondent.

In his April 3, 2006 brief, petitioner Hawkins filed his third request for additional discovery regarding claim five. Hawkins requests leave to depose Frank Berry, Michael Boggess, Richard Clark, Diane Olsen, and Michael Volpi.

Habeas Rule 6(a) provides that a "party shall be entitled to invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise." Good cause for discovery under Rule 6(a) is shown "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief . . ." *Pham v. Terhune*, 400 F.3d 740, 743 (9th Cir. 2005) (*quoting Harris v. Nelson*, 394 U.S. 286, 299 (1969)). The Ninth Circuit has also described this standard as being that discovery must be allowed when it is "essential" for the petitioner to "develop fully" his or her underlying claim. *Id.* (*quoting Jones v. Wood*, 114 F.3d 1002, 1009 (9th Cir. 1997)). Where the evidence sought via a petitioner's discovery request "may well contain favorable, material

1 information,” the Ninth Circuit has held that it is “essential,” and that the district court is
2 required to grant the petitioner’s request pursuant to Rule 6(a). *Id.*

3 The State is ordered to respond to Hawkins’ latest request for discovery **no later**
4 **than April 18, 2006.** Hawkins may file a reply, if any, *on the issue of the requested*
5 *discovery ONLY no later than April 25, 2006.* There will be NO extensions of this briefing
6 schedule. Following briefing, the court will issue an order regarding Hawkins’ entitlement to
7 additional discovery under Habeas Rule 6(a).

8 **IT IS SO ORDERED.**

9
10 Dated: April 6, 2006



11 _____
12 PHYLLIS J. HAMILTON
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28